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(2006) 12 JH CK 0008

In the Jharkhand High Court

Case No : Criminal M.P. No. 1197 of 2005

Rambriksha Hazam — APPELLANT

Vs

State of Jharkhand and Dy. Development Commissioner-cum-Chief Executive Officer, Zila Parishad — RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 467, 468

Citation : (2007) 1 BLJR 665

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Advocate : S. Ranjan, for the Appellant; S.N. Rajgaria. , Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner, Rambriksha Hazam, has preferred this petition u/s 482 of the Code of Criminal Procedure for quashment of the order dated 11.9.2004 including the entire criminal proceedings arising out of Hazaribagh P.S. Case No 449 of 2004 corresponding to G.R. Case No. 2208 of 2004 registered under Sections 409/420/467/468/471/120B of the Indian Penal Coda pending in the court of Chief Judicial Magistrate. Hazaribagh.

2. The prosecution story in brief is that the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Praishad, Hazaribagh presented his written statement before the Officer-in-Charge. Sadar Thana, on 10.9.2004 stating inter alia that the Zila Parishad was selected as Agency by the Deputy Development Commissioner-cum-Chief Executive Officer for construction work of the buildings of Anganbari Centres and offices cum Godowns for Child Development Project Officers. The construction work of 70 Anganbari Kendra, 3 Office cum Godowns for Child Development Project Officer were assigned to Mr. Ram Kumar Singh, Junior Engineer and for that money was advanced through various cheques, total

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to the tune of Rs. Rs. 98,00,574.00. It was specifically mentioned in the Work Order letter No. 350 dated 31.3.1998 issued by the Deputy Development Commissioner, Hazaribagh that the construction work must be completed by 30th June, 1998 and it was cautioned that strong action would be taken, in the event construction work not being completed within time framed. The said amount was given to Ram Kumar Singh in advance but he did not take any interest in completion of the work within time frame and inspite of specific instruction, from time to time he could not complete the construction work. He even did not submit the certificate in respect of completion of work and inquiry was conducted by an enquiry team constituted by the then Deputy Commissioner and the team reported that only 11 projects were completed whereas 59 projects were yet to be completed. It was further reported by the team that the construction work was not even started in 13 projects and in this manner, Ram Kumar Singh mis-appropriated the public money. It was further reported by the Executive Engineer, Rood Construction Division that Sub-standard materials were, used for the construction work and it were shown to be done in the measurement book (in short M.B) without its being done. It was further detected in course of enquiry that the Junior Engineer made entry about the work done worth Rs. 1,23,181.00/- in the M.B. whereas work done was detected only for Rs. 70,299.00. Similarly various irregularities and mis-appropriation of public money was detected for which the Junior Engineer was held responsible.

3. So far as the complicity of the petitioner, Rambriksha Hazam, is concerned, he was posted as Accountant in the office of the Engineering Section, District Board Hazaribgh, and it was alleged that he along with Sri. Ratan Kumar District Engineer I/C District Board, Hazari bagh had certified the said measurement book of the Junior Engineer and in this manner all the three mis-appropriated the public money in prosecution of criminal conspiracy.

4. The learned Counsel appearing for the petitioner submitted that admittedly the petitioner was posted as Accountant in the office of the Zila Parishad, Engineering Section. Hazaribagh and there was a separate post of Accountant in the establishment of Zila Parishad and on the said post Sri. Baidyanath Prasad Singh, Accountant was functioning. Admittedly, money was advanced to the Executing Agency, Ram Kumar Singh by different cheques duly signed by the Chief Executive Officer-cum-Deputy Development Commissioner, Hazaribagh. The petitioner being the Accountant was in on-way related to the verification of the physical work on the spot rather it was the duty of the District Engineer to assess the construction work at each center and in the process thereof to verify the measurement of work as done by the Engineers. Duty was caste upon to the District Engineer to verify the measurement book with that of the actual work done at the site. The measurement book after being arithmetically checked by the Accountant, used to be sent to the Bill clerk of the Engineering Section to find out the accuracy and after the said verification the measurement book is sent back to the District Engineer Accountant, Engineering Section.

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5. The petitioner used to check the rates as lo whether correctly entered into in the measurement book in the light of the estimate prepared and the arithmetical accuracy made there in. The duty assigned to the Accountant has been well-described in the Code of Regulation for the Public Works Department, 1978 as also in chapters 3 and 14 of the Bihar and Orissa Local Self Government Reference Book (Account Rules for District Engineer).

6. From perusal of the said hooks, the learned Counsel submitted that it would be evident whereof that the function of the Accountant is lo work as the complier of the accounts of the District Engineer in accordance with the prescribed Rule, as District Board''s Auditor, charged with the responsibility of doing the usual audit work and to check the initial accounts, vouchers etc. as the financial assistant and Advisor to the District Engineer.

7. Advancing his argument, the learned Counsel submitted that from perusal of paragraph 141 as contained in Chapter XIV of the Accounts Rule in relation to the passing of the bills in Zila Parishad, it would be evident that the petitioner being an Accountant in the Establishment of the District Engineer had to check that every bills should be enfaced with the word, checked over the dated initials of the Accountant as well as of any clerk who may have applied a preliminary check. It is not necessary that the Accountant should cheek personally the arithmetical accuracy of all vouchers and accounts and he is responsible that a cent percent check is exercised efficiently under his supervision. Therefore, the Accounts Rule in the District Engineer, Paragraph-141 does not caste duty upon the Accountant to see as to whether the work was executed or not and in this manner, under the circumstances, the petitioner cannot be held to be responsible for execution and non-execution of the work assigned to Junior Engineer and it was the duty of the District Engineer. Zila Parishad being the Supervisory Officer to inspect and ensure the work done and examine the measurement book, Finally it has been submitted that the Accountant whether of the District Engineer Office or of the office of Zila Parishad can only verify the cost/price written in the measurement book in accordance with the estimate as well as its arithmetical accuracy. The petitioner, in fact, had made objection in his official note from advancing amount to the Executing Agency without making adjustment of the earlier advance which can be found in his note sheet dated 21.1.1999 and the said note sheet was forwarded to the District Engineer. Although the District Engineer subsequently recommended for payment of advance money after adjustment of tire work done by the Executing Agency. The recommendation of the District Engineer for the payment of the balance was approved by the Deputy Development Commissioner-cum- Chief Executive Officer of the Zila Parishad (Annexure-4).

8. The learned Counsel stressed that for the same allegation as contained in the F.I.R. against the petitioner, a departmental enquiry was contemplated and in the said departmental enquiry the petitioner was exonerated from the charge as contained in letter No. 317 dated 30th January, 2006 (Annexure-5). He

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submitted that as the petitioner has been exonerated from the charge under the Departmental proceeding, the criminal prosecution against the petitioner for the similar charge is unsustainable. In this context reliance has been placed on the decision reported in P.S. Rajya Vs. State of Bihar, . The Hon''ble Supreme Court in P.S. Rajya v. State of Bihar observed:

At the outset we may point out that the this Court for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it. On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a department proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings.

9. For the same set of allegation an enquiry was contemplated against the petitioner by Assistant Project Officer-cum-Enquiry Officer of District Rural Development Authorith (DRDA), Hazaribagh and the Enquiry Officer vide his letter No. 2533 dated 17.7.2006 by detailed enquiry exonerated the petitioner from the charge framed against the petitioner and the record was returned to the Deputy Development Commissioner-cum-Chief Executive Officer, District Board, Hazaribagh.

10. The learned A.P.P. opposed the contention and submitted that at the first instance the petitioner was exonerated from the charges of the departmental proceeding by the Enquiry Officer, Sandhya Gupta, Assistant Project Officer, DRDA, Hazaribagh on the ground alone that the relevant documents of the charge and allegation were not made available to her and therefore, she presumed the innocence of the petitioner and he was exonerated from the charge, but he fairly conceded that after detailed enquiry by another Enquiry Officer on examining the relevant documents the petitioner was exonerated from the charge framed against him in the departmental proceeding.

11. From the careful perusal of the contention of the F.I.R based upon written report of the Deputy Development Commissioner-cum-Chief Executive Officer, District Board, Hazaribagh I find that the police case was registered under Sections 409/420/467/468/471/120B of the Indian Penal Code against the petitioner, though some of the sections were not relevant on comparing it with the charges framed (part of the Annexure-6 at page-7 of the supplementary affidavit) but I find both are almost similar in nature so far as the nature of allegations are concerned.

12. The petitioner was exonerated from the departmental proceeding by a

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detailed enquiry conducted by the Enquiry Officer based upon the relevant documents before him wherein it was observed that for want of evidence and keeping in view the nature of the job and responsibility assigned to the Accountant the charge leveled against the petitioner could not be proved.

13. I find from the facts and circumstances of the case that the petitioner''s case can be brought under more than one heads of the guidelines as laid down in Bhajan Lal''s case (supra) for quashing the F.I.R.

14. Relying upon the propositions of law as formulated by the Supreme Court of India in P.S. Rajya v. State of Bihar (Supra) and under the facts and circumstances of the case, I find merit in this petition filed u/s 482 of the Code of Criminal Procedure and in exercise of inherent power the criminal proceeding against the petitioner in respect of Hazaribagh P.S. Case No. 449 of 2004 corresponding to G.R. Case No. 2208 of 2004 is quashed. This petition is allowed.

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